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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,794	12/02/2003	Timothy James Lang	LNG1USA	3337

270 7590 01/26/2005

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EXAMINER


OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3654

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No.	Applicant(s)	
	10/725,794	LANG ET AL.	
	Examiner	Art Unit	
	Esther O. Okezie	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-15 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,9 and 10 is/are rejected.
- 7) ☐ Claim(s) 3,4,6-8 and 11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1,2, and 12 rejected under 35 U.S.C. 102(b) as being anticipated by Fulton.
2. Regarding claim 1 Fulton discloses a pie lifter comprising a substantially rigid, formed, sheet (fig. 2) having an intermediate portion (11) adapted engage a major part of the surface of one exposed end of a remainder sector of circular article pastry, said intermediate portion having first and second, parallel opposite edges, a first flange (10), unitary with said intermediate portion, and extending transversely, relative to said intermediate portion, in a first direction from said first edge, and second flange (12 and 13), unitary with said intermediate portion, and extending a second direction, opposite to said first direction, from said second edge, whereby said first and second flanges can be used interchangeably, respectively, as handle, and as a support for lifting a serving portion of the pastry article.

Art Unit: 3654

3. Regarding claim 2 Fulton discloses the device of claim 1, wherein each of the first and second flanges has opposite surfaces at least major portions of which are planar and parallel, and in which the planar major portions of the surfaces of both of the first and second flanges are parallel (see figure 2).
4. Regarding claim 12 Fulton discloses the device of claim 1, wherein the intermediate portion is rectangular (11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollard.
6. Regarding claims 1 and 2 pollard discloses a carton assembly for pastry comprising a substantially rigid, formed, sheet (sheet 17, fig. 3) having an intermediate portion (20) adapted engage a major part of the surface of one exposed end of a remainder sector of circular article pastry, said intermediate portion having first and second, parallel opposite edges, a first flange (24), unitary with said intermediate portion, and extending transversely, relative to said intermediate portion, in a first direction from said first edge, and second flange

Art Unit: 3654

(25), unitary with said intermediate portion whereby said first and second flanges are parallel

Pollard however does not show a second flange extending in a second direction, opposite to said first direction from said second edge. It would be obvious to one of ordinary skill in the art at the time of the invention to invert any of the two flanges in opposite directions at their pre-folded line segments (18 and 19, fig 3) in order to support slices of pastry while offering a handle for lifting and serving the slices.

7. Regarding claim 5 Pollard discloses a pastry server in which each of said flanges has an outer edge spaced from said intermediate portion, said outer edge having a first end and a second end, the distance from said first end to said intermediate portion being greater than the distance from said second end to said intermediate portion (see figure 2).

8. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pollard in view of Montesi. Pollard discloses a pastry server in which each of said flanges has an outer edge spaced from said intermediate portion, said outer edge having a first end and a second end, the distance from said first end to said intermediate portion being greater than the distance from said second end to said intermediate portion (see figure 2).

Pollard does not disclose beveled outer edges on each flange. Montesi discloses a pastry tool and specifically teaches beveled peripheral edges in a knife edge like fashion (28 and 46; column 2, lines 21-30). It would be obvious to

Art Unit: 3654

one ordinary skill in the art to modify the edges of Pollard's invention to include beveled edges in order to more easily slide a slice of pastry on to the device.

Allowable Subject Matter

Claims 3,4, 6-8, and 11 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13,14, and 15 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (703) 305-0433. The examiner can normally be reached on Mon-Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3654

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO

A handwritten signature in black ink that reads "Kathy Matecki". The signature is written in a cursive, flowing style.

KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600